

**ACTION:** Proposed rule.

**SUMMARY:** The Service proposes to determine the Cahaba shiner (*Notropis* sp.), spring pygmy sunfish (*Elassoma* sp.), goldline darter (*Percina aurolineata*), and pygmy sculpin (*Cottus pygmaeus*) to be Endangered species and to identify Critical Habitat for these species. This action is being taken because of their decreased population levels and threatened modification of their habitat. The proposed action, if finalized, would protect the populations of these fishes and their habitat. The Cahaba shiner, spring pygmy sunfish, and pygmy sculpin are known only from Alabama. The goldline darter is known from Alabama and Georgia.

**DATES:** Comments from the public must be received by January 30, 1978. Comments from the Governors of States involved with this action must be received by February 27, 1978.

**ADDRESSES:** Submit comments to Director (OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments and materials received will be available for public inspection during normal business hours at the Service's Office of Endangered Species, Suite 1100, 1612 K Street NW., Washington, D.C. 20240.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Keith M. Schreiner, Associate Director, Federal Assistance, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 202-343-4646.

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

Section 4(a) of the Endangered Species Act of 1973 states:

**General.**—(1) The Secretary shall by regulation determine whether any species is an endangered species or a threatened species because of any of the following factors:

- (1) the present or threatened destruction, modification, or curtailment of its habitat or range;
- (2) overutilization for commercial, sporting, scientific, or educational purposes;
- (3) disease or predation;
- (4) the inadequacy of existing regulatory mechanism; or
- (5) other natural or manmade factors affecting its continued existence.

This authority has been delegated to the Director.

**SUMMARY OF FACTORS AFFECTING THE SPECIES**

These findings are summarized herein under the five criteria of Section 4(a) of the Act. These factors, and their application to the four species of fishes, are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.*

(1) Cahaba shiner (*Notropis* sp.)—Proposed Endangered. This undescribed shiner is endemic to a short segment of the Cahaba River's main channel in central Alabama. In the Cahaba, the shiner

is known only from 30 river miles in Bibb and Shelby Counties, Alabama. This species is the only vertebrate endemic to the Cahaba drainage basin.

The section of the Cahaba River inhabited by the Cahaba shiner has been severely degraded during the past 15 years. The major problem has been the degradation of water quality due to urbanization and coal strip mining. The urbanization activities in the headwaters have resulted in an increased silt load, while eutrophication has commenced in response to enrichment from newly constructed sewage treatment plants. The coal strip mining activity has resulted in an increase in an already high silt load. The habitat is clearly changing and the activities which have brought about the changes are continuing.

In a recent (1976) publication on Endangered and Threatened Plants and Animals of Alabama, the Cahaba shiner was listed as endangered.

(2) Spring pygmy sunfish (*Elassoma* sp.)—Proposed Endangered. The spring pygmy sunfish is presently known only from Beaverdam (Moss) Spring, LIMESTONE County, Alabama. It was thought to be extinct until rediscovered in Beaverdam Spring in 1973 by Dr. David Etnier. The habitat is dense, submerged aquatic vegetation in water six inches to two feet in depth.

The threats to the spring pygmy sunfish are pollution and siltation of Beaverdam Spring. Cultivation adjacent to the spring is contributing heavy silt loads, especially during periods of high runoff. In recent years pollution from insecticides have caused heavy fish kills in the area near Beaverdam Spring. Habitat alteration due to siltation and pollution apparently has led to the extirpation of the spring pygmy sunfish in two other springs.

The spring pygmy sunfish is listed as endangered in the 1976 publication "Endangered and Threatened Plants and Animals of Alabama."

(3) Goldline darter (*Percina aurolineata*)—Proposed Endangered. The goldline darter is known only from the Cahaba and Coosawattee Rivers of the Mobile Basin. In the Cahaba drainage in central Alabama, it is known from several miles of the main channel between Centreville (Bibb County) and Helena (Shelby County) and from one locality on the Little Cahaba River in Bibb County. In the Coosawattee drainage in northwest Georgia, it is known from the main channel of the river above Coosawattee Falls in Gilmer County. The goldline darter's typical habitat is gravel tiers and shoals in the river proper, i.e., not its tributaries.

The goldline darter is threatened in the Cahaba by pollution from domestic, industrial waste and acid drainage from strip mining. The large volume of water presently being released into the Cahaba, as well as strip mine runoff, has greatly degraded the water quality in recent years. Proposals call for additional waste to be released into the Cahaba River in the near future. Any increase in the silt and nutrient load will seriously jeopardize the existence of the Cahaba popu-

[ 4310-55 ]

**DEPARTMENT OF THE INTERIOR**

Fish and Wildlife Service

[ 50 CFR Part 17 ]

**ENDANGERED AND THREATENED WILDLIFE AND PLANTS**

Proposed Endangered Status and Critical Habitat for Four Fishes

AGENCY: Fish and Wildlife Service, Interior.

lation of the goldline darter. The Coosawattee population of the goldline darter was adversely impacted when a portion of its habitat was inundated by a Corps of Engineers impoundment.

The goldline darter is considered as endangered in Alabama and threatened in Georgia.

(4) *Pygmy sculpin (Cottus pygmaeus)*—Proposed Endangered. The highly specialized pygmy sculpin's known habitat is Coldwater Spring and its immediate run and approximately 150 yards of Coldwater Creek below the spring. The spring is located west of Anniston, Calhoun County, Alabama. Coldwater Spring is used as a water supply for the city of Anniston, which presently has a pumping capacity of 22.5 million gallons per day. The spring's average flow is 32 million gallons per day with a range from 20 to 34 million gallons per day.

The threats to the pygmy sculpin include aquatic vegetation control in the spring and increased pumping. The young and adult sculpins have been observed in large numbers in the submerged aquatic vegetation. Elimination of the vegetation by chemical or biological methods would adversely impact the sculpin. Increased water demands in the future could force total utilization of the Coldwater Spring flow. The city of Anniston's Waterworks and Sewers Board is aware of the presence of the sculpin but has made no commitment to its protection.

In the past, the pygmy sculpin in Coldwater Creek was adversely impacted by the toxic waste from the U.S. Army's Anniston Ordnance Depot. In 1976 a treatment program was initiated to detoxify chemical waste flowing into Dry and Coldwater Creeks from the Ordnance Depot. It is too early to determine the success of this abatement program and its impact on the pygmy sculpin.

In a recent (1976) publication on Endangered and Threatened Plants and Animals of Alabama, the pygmy sculpin was listed as endangered.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* Not applicable.

3. *Disease or predation.* Not applicable.

4. *The inadequacy of existing regulatory mechanisms.* Not applicable.

5. *Other natural or manmade factors affecting its continued survival.* Not applicable.

#### CRITICAL HABITAT

Section 7 of the Act, entitled "Inter-agency Cooperation", states:

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not

jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

An interpretation of the term Critical Habitat was published by the Fish and Wildlife Service and the National Marine Fisheries Service in the *FEDERAL REGISTER* of April 22, 1975 (40 FR 17764-17765). After a review of the available information for these species, the areas delineated below were found to qualify as Critical Habitat. Specifically, these areas were found to have environmental elements necessary for successful reproduction and growth.

The areas delineated to not necessarily include the entire Critical Habitat of these fishes and modifications to Critical Habitat descriptions may be proposed in the future. In accordance with Section 7 of the Act, all Federal departments and agencies would be required to insure that actions authorized, funded, or carried out by them do not result in the destruction or adverse modification of the Critical Habitat of the Cahaba shiner, spring pygmy sunfish, goldline darter, and pygmy sculpin.

All Federal departments and agencies shall, in accordance with Section 7 of the Act, consult with the Secretary of the Interior with respect to any action which is considered likely to affect Critical Habitat. Consultation pursuant to Section 7 should be carried out using the procedures contained in the "Guidelines to Assist the Federal Agencies in Complying with Section 7 of the Endangered Species Act of 1973" which have been made available to the Federal agencies by the Service.

#### EFFECTS OF THE RULEMAKING

In addition to the effects discussed above, the effects of these determinations and this rulemaking include, but are not necessarily limited to, those discussed below.

Endangered species regulations already published in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all Endangered species. These regulations are found at 50 CFR 17.21 and are summarized below.

With respect to the Cahaba shiner, spring pygmy sunfish, goldline darter, and pygmy sculpin in the United States, all prohibitions of Section 9(a)(1) of the Act, as implemented by 50 CFR 17.21, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife which was illegally taken. Certain exceptions would apply to agents of the Service and State conservation agencies.

Regulations published in the *FEDERAL REGISTER* of September 26, 1975 (40 FR 44412), codified at 50 CFR 17.22 and 17.23, provided for the issuance of permits to carry out otherwise prohibited activities involving Endangered or Threatened species under certain circumstances. Such permits involving Endangered species are available for scientific purposes or to enhance the propagation or survival of the species. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship which would be suffered if such relief were not available.

Pursuant to Section 4(b) of the Act, the Director will notify the Governors of Alabama and Georgia with respect to this proposal and request their comments and recommendations before making final determinations.

#### PUBLIC COMMENTS SOLICITED

The Director intends that the rules finally adopted will be as accurate and effective as possible in the conservation of any Endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological or other relevant data concerning any threat (or the lack thereof) to the Cahaba shiner, spring pygmy sunfish, goldline darter, and pygmy sculpin;

(2) The location of and reasons why any habitat of the Cahaba shiner, spring pygmy sunfish, goldline darter, and pygmy sculpin should or should not be determined to be Critical Habitat as provided for by Section 7 of the Act;

(3) Additional information concerning the range and distribution of the Cahaba shiner, spring pygmy sunfish, goldline darter, and pygmy sculpin.

Final promulgation of the regulations on the Cahaba shiner, spring pygmy sunfish, goldline darter, and pygmy sculpin will take into consideration the comments and any additional information received by the Director and such communications may lead him to adopt final regulations that differ from this proposal.

An environmental assessment has been prepared in conjunction with this proposal. It is on file in the Service's Office of Endangered Species, 1612 K Street NW., Washington, D.C. 20240, and may be examined during regular business hours or can be obtained by mail. A determination will be made at the time of final rulemaking as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

The primary author of this proposed rulemaking is Dr. James D. Williams, Office of Endangered Species 202-343-7814.

**AUTHORITY**

These amendments are prepared under Sections 4 and 7 of the Endangered Species Act of 1973 (16 U.S.C. 1533, 1536).

**REGULATIONS PROMULGATION**

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chap-

ter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. It is proposed to amend § 17.11 by adding, in alphabetical order, under Fishes, the following to the list of animals:

§ 17.11 Endangered and threatened wildlife.

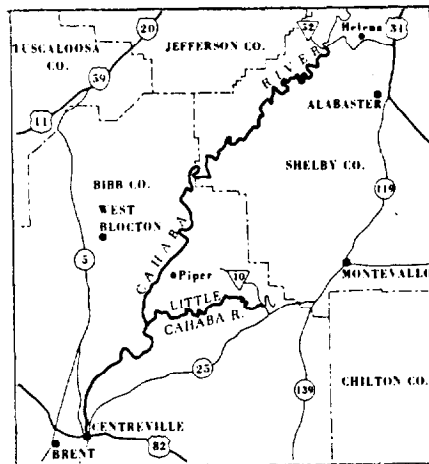
Species		Range					
Common name	Scientific name	Population	Known distribution	Portion of range where threatened or endangered	Status	When listed	Special rules
Fish:							
Darter, goldline..	<i>Percina auro-lineata</i> .	NA	U.S.A. (Alabama, Georgia).	Entire.....	E	-----	NA
Sculpin, pygmy..	<i>Cottus pygmaeus</i> ...	NA	U.S.A. (Alabama).	....do.....	E	-----	NA
Shiner, Cahaba..	<i>Notropis</i> sp.....	NA	....do.....	....do.....	E	-----	NA
Sunfish, spring pygmy.	<i>Elassoma</i> sp.....	NA	....do.....	....do.....	E	-----	NA

**§ 17.95 [Amended]**

2. Also, the Service proposes to amend § 17.95(e) *Fishes* by adding Critical Habitat of the Cahaba shiner after that of the spotfin chub as follows:

**CAHABA SHINER**  
(*Notropis* sp.)

Alabama. Bibb and Shelby Counties. Main channel of Cahaba River from U.S. Highway 82 crossing at Centreville, Bibb County, upstream to Shelby County Highway 52 west of Helena. Bibb County Main channel of Little Cahaba River from its junction with the Cahaba River upstream to Bibb County Highway 10 crossing each of Piper.

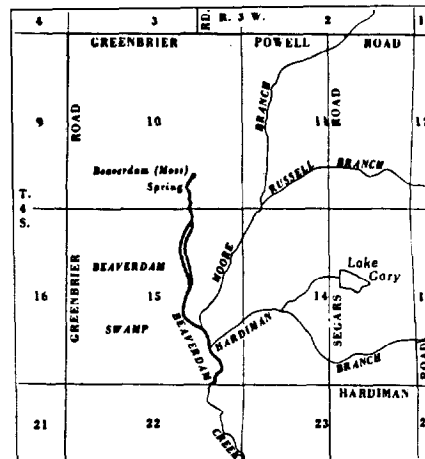


Critical Habitat for the Cahaba Shiner

3. § 17.95(e), *Fishes* is further amended by adding Critical Habitat of the spring pygmy sunfish after Alabama cavefish as follows:

**PYGMY SUNFISH**  
(*Elassoma* sp.)

Alabama. Limestone County. Beaverdam (Moss) Spring and run from its origin in the southwest ¼ of Section 10 (Township 4 South, Range 3 West) downstream through Section 15 (Township 4 South, Range 3 West) to the boundary line between Section 15 and 22.



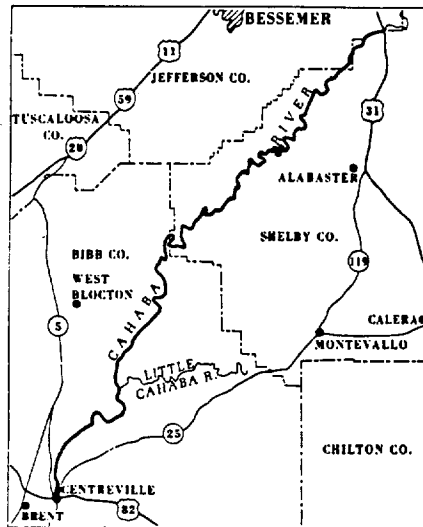
Critical Habitat for the Pygmy Sunfish

4. § 17.95(e) *Fishes* is further amended by adding Critical Habitat of the goldline darter after that of the slackwater darter as follows:

**GOLDLINE DARTER**  
(*Percina aurolineata*)

Alabama. Bibb, Shelby, and Jefferson Counties. Main channel of Cahaba River from U.S. Highway 82 crossing at Centreville, Bibb County, upstream to U.S. Highway 31 crossing south of Birmingham, Shelby County.

## PROPOSED RULES



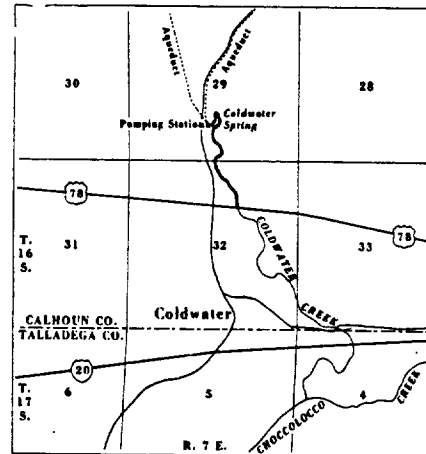
Critical Habitat for the  
Goldline Darter

5. § 17.95(e) Fishes is further amended by adding Critical Habitat of the pygmy sculpin after that of the snail darter as follows:

**PYGMY SCULPIN**  
(*Cottus pygmaeus*)

Alabama. Calhoun County. Coldwater Spring and run in the south ½ of Section 29 (Township 16 South, Range 7 East). Coldwater Creek from the junction of Coldwater

Spring run downstream to U.S. Highway 78 crossing in the north ½ of Section 32 (Township 16 South, Range 7 East):



Critical Habitat for the  
Pygmy Sculpin

NOTE.—The Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: November 18, 1977.

LYNN A. GREENWALT,  
Director, Fish and Wildlife Service.  
[FR Doc.77-34122 Filed 11-28-77; 8:45 am]